THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P. No. 24331 of 1995

Dated: 24.10.2006

Between:

The Management of Singareni Collieries
Company Limited, Ramagundam Division Area-I,
Godavarikhani, Karimnagar District,
Rep., by its General Manager,
Ramagundam Area-I.

… Petitioner

AND

The Presiding Officer,
Industrial Tribunal-I,
Chandra Vihar, M.J. Road, Hyderabad
& another.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

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ORDER:-

The management of Singareni Collieries Company Limited filed the present writ petition questioning the Award of the Industrial Tribunal-I in I.D.No.1 of 1999 dated 09.04.1994.

The General Secretary, Singareni Collieries Automobile Workers' Association raised an industrial dispute before the 1st respondent and the issue referred to the 1st respondent is:

> "Whether the action of the management of M/s. Singareni Collieries Company Limited, Godavari Khani, District Karimnagar (AP) in not granting Category IV to S/Sri N.Issac, K.Ramulu, C.N.Pavitran, N.L.Das, N.John, S.Charalu and Ch.Raji Reddy from the dore they completed 5 years in Category V is justified? If not, to what relief the workman concerned are entitled?"

It was the case of the 2nd respondent – Association that there was a Memorandum of Settlement arrived between the petitioner and the 2nd respondent under Section 12(3) of the Industrial Disputes Act, 1947 on 03.03.1989 with respect to the promotional scheme for tradesman. Annexure-I provided for promotion from Category V to VI and the relevant portion of the settlement is extracted hereunder:

"vi) Motor Mechanics in Category V with 5 years service will also be considered for promotion to Category VI based on the availability of vacancies and a trade test.

vii) The management will provide promotional avenues for those Motor Mechanics who have put in 9 years services in Category V. If the Management is not in a position to show promotional opportunities either in Open Cast or in underground/mines/departments for such motor mechanics, they will be placed in Category VI subject to assessment report during 10th year of service in Category V. They will, however, continue to perform Category V jobs and accounted for accordingly. This will be done biannually, i.e., on 1st April and 1st October every year to place/promote the candidates."

The 2nd respondent pleaded before the 1st respondent – Tribunal that following this settlement, the tradesmen, who completed five years of service in Category-V are automatically entitled to the promotion to Category-VI and that therefore, the action of the petitioner – Management in not giving them promotion is illegal. The 1st respondent – Tribunal accepted the said contention and granted the relief to the effect that all the tradesmen, who completed five years of service in Category-V are entitled to the promotion to Category-VI irrespective of availability of vacancies.

The learned counsel for the petitioner vehemently contended that the 2nd respondent has not pleaded before the 1st respondent nor the 1st respondent has considered whether there was availability of vacancies. The learned counsel further contended that promotion from Category V to VI on completion of five years is not automatic and that the same is subject to two conditions viz., (i) Availability of vacancies, and (ii) Passing of trade test. According to the learned counsel, unless availability of vacancy is pleaded and proved, no promotions, merely

on completion of five years, can be made.

The learned counsel for the 2nd respondent submitted that prior to the settlement dated 03.03.1989, the promotions were not governed by any regulation and that as a matter of practice, all the tradesmen, who completed five years of service in Category-V were being promoted to Category-VI. His further contention is that as seven persons, whose names are mentioned in the Annexure to the claim settlement filed before the 1st respondent – Tribunal, have completed five years of service in Category-V even before the settlement was arrived at on 03.03.1989, they are entitled to promotion.

Having considered the rival contentions, I am unable to accede to the contention of the 2nd respondent that the tradesmen, who completed five years of service prior to the settlement dated 03.03.1989 are entitled to promotion to Category-VI irrespective of availability of vacancies. The said oral arrangement, which is now sought to be pressed into service before me was never pleaded before the 1st respondent – Tribunal or the Tribunal had granted the relief on the basis of such plea. Since the promotions are sought by the Association after coming into force of the settlement dated 03.03.1989, any promotions to be made after the said date shall be in conformity with the said settlement and not in derogation of the same. The 1st respondent – Tribunal failed to consider whether the vacancies were available in Category-VI and over looked the requirement of availability of vacancies for promoting any tradesman on completion of five years. The Award of the 1st respondent – Tribunal, therefore, suffers from a patent error of law being contrary to the settlement dated 03.03.1989 under which availability of vacancies is *sine qua non* for

claiming promotion to Category-VI.

For the aforementioned reasons, the writ petition is allowed and the Award of the 1st respondent – Tribunal is set aside. It is needless to say that as and when vacancies are available, the tradesmen, who completed five years of service in Category-V are entitled to promotion and even in the absence of vacancies on completion of nine years of service, they are entitled to notional promotion to Category-VI as per clause 7 of settlement dated 03.03.1989.

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C.V. NAGARJUNA REDDY, J

Date: 24.10.2006
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